

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

KEVIN JEROME MOORE,)
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Movant,)
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v.) No. 4:25-cv-280-SNLJ
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UNITED STATES OF AMERICA,)
)
)
Respondent.)

MEMORANDUM AND ORDER

This matter comes before the Court on movant's Motion to Vacate, Set Aside or Correct Sentence pursuant to Title 28, United States Code, Section 2255. ECF No. 1. The motion is successive and will be denied and dismissed.

On July 7, 2021, movant pled guilty to interfering with commerce by robbery, in violation of 18 U.S.C. § 1951 (Count I), and brandishing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii) (Count II). *United States v. Moore*, No. 4:19-cr-895-SNLJ (E.D. Mo.). On the same day, the Court sentenced movant to a term of 57 months as to count one and 84 months as to count two, such terms to be served consecutively for an aggregate term of 141 months, and four years of supervised release. *Id.* at ECF No. 45. Movant appealed and the Eighth Circuit dismissed the appeal as untimely, issuing its mandate on November 4, 2021. *Id.* at ECF Nos. 48-53.

On November 8, 2021, movant filed his first motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. *See Moore v. United States*, No. 4:21-cv-1322-SNLJ (E.D. Mo.). The Court denied and dismissed the motion to vacate on January 4, 2024 for

the reason that his claims were waived, procedurally barred, and failed as a matter of law. *Id.* at ECF Nos. 24, 25.

Movant filed the instant second motion to vacate, set aside, or correct his sentence on March 5, 2025. ECF No 1. He appears to allege the ineffective assistance of counsel for two reasons: (1) his attorney should have sought a downward departure for diminished mental capacity; and (2) his attorney should have “argued for a plea bargain.” *Id.* at 4-5. Under 28 U.S.C. § 2244(a) and § 2255(h) district courts may not entertain a second or successive motion to vacate unless it has first been certified by the Court of Appeals. The instant motion to vacate has not been certified by the Court of Appeals for the Eighth Circuit. As a result, the Court may not grant the requested relief, and this action must be denied and dismissed.

Accordingly,

IT IS HEREBY ORDERED that movant’s motion to vacate, set aside or correct sentence is **DENIED AND DISMISSED as SUCCESSIVE.** [ECF No. 1]

IT IS FURTHER ORDERED that movant’s motion for appointment of counsel is **DENIED as moot.** [ECF No. 2]

An Order of Dismissal will accompany this Memorandum and Order.

Dated this 7th day of March, 2025.



STEPHEN N. LIMBAUGH, JR.
SENIOR UNITED STATES DISTRICT JUDGE